REMARKS

Interview Summary

Applicants hereby thank the Examiner for the courtesy of extending a telephonic interview with applicants' representative on April 21, 2009. During the interview, claim 15 was discussed in light of the prior art cited by the Examiner. Applicants' representative argued that the references alone or in combination fail to disclose several limitations of the claim, as discussed in more detail below. The Examiner asserted that those differences over the prior art were not clearly recited in the claim. Applicants' representative agreed to amend the claims in order to more clearly point out the inventive aspects of applicants' system. Thus, no agreement was reached during the interview regarding the patentability of the claims.

Claims

Claims 15, 17-24, 31, 32, 34 and 35 were pending when last examined. With this Response, applicants have canceled claims 19 and 32 and amended claims 15, 17, 18, 20-24, and 31. No new matter has been added. Support for the amendment can be found at least in FIGS. 1-3 and the corresponding description in the specification.

Claim Rejections – 35 USC § 101

Claims 15, 17, 18, 20-24, 31, 34, and 35 were rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter according to the Examiner. In particular, the Examiner stated that the claim "is completely silent as to any structure of the apparatus." In response, applicants amended independent claims 15 and 22 to explicitly recite that the apparatus includes "a storage device and a controller for processing user history data stored in the storage device." Support for this amendment can be found at least in pages 9 and 10. Because the amended claims recite the structure of the apparatus, applicants respectfully request the Examiner to withdraw the rejections under section 101.

Claim Rejections – 35 USC § 103

Claims 15, 18, 20-24, 31, 34, and 35 were rejected under 35 U.S.C. 103(a) as being unpatentable over Ozer in view of Dedrick in view of Del Sesto in view of Kiewit in view of Grauch in view of Bunney. Applicants respectfully traverse the rejections.

Claim 15, as amended, recites a method that includes, in part, storing a hierarchical data structure for describing user history. The hierarchical data structure includes:

(a) a user information element to identify a user;

(b) a first user action history of the user as a first structural element of the hierarchical data structure, the first user action history including

(b-1) a first data protection attribute to specify whether all information in the first user action history is protected or not, and

(b-2) a first list of user action items for describing a first aspect of the user's multimedia consumption including skipping or slow playing content; and

(c) a second user action history of the user as a second structural element at the same level of the hierarchical data structure as the first structural element, the second user action history including

(c-1) a second data protection attribute to specify whether all information in the second user action history is protected or not, and

(c-2) a second list of user action items for describing a second aspect of the user's media consumption including playing or recording a content stream.

Each user action item in both the first and second lists records a corresponding action of the user's consumption of content from a respective multimedia program and has (i) an action time indicating when the corresponding action of the user took place and (ii) a unique content reference identifier that identifies the consumed multimedia program independent of the multimedia program's location and enables access to content related metadata that is not provided in the user history.

The references cited by the Examiner fail to disclose several limitations required by the claim.

For example, none of the references discloses the claimed hierarchical data structure in which the same user has two separate first and second user action histories including respective first and second lists of user action items, wherein each user action item in both the first and second lists records a corresponding action of the user's consumption of content from a respective multimedia program and has (i) an action time indicating when the corresponding action of the user took place and (ii) a unique content reference identifier that identifies the consumed multimedia program independent of the multimedia program's location and enables access to content related metadata that is not provided in the user history.

The Examiner asserted that Grauch's parts 80, 82, and 84 disclose the claimed two separate lists of user action items. Office Action of 2/4/2009 at 2. However, neither Grauch's part 82 nor its part 84 can be the claimed first or second list of user action items, because they do not have any user action item that "records a corresponding action of the user's consumption of content from a respective multimedia program" as required by the claim. Instead, Grauch's part 82 is a Prevue Guide Data including program guide information and part 84 is a Broadcast Advertising schedule, both of which are independent of what the user actually did. *See, e.g.*, Grauch at Figure 7 and 21:11-16. Accordingly, Prevue Guide Data 82 and Broadcast Advertising Data 84 lack the claimed recording of the user actions as well as the claimed action time indicating when the corresponding action of the user took place. During the interview of April 21, the Examiner seemed to agree.

The cited references also fail to disclose the claimed first data protection attribute in the first user action history and the second data protection attribute in the second user action history. The Examiner asserted that Del Sesto discloses these limitations. Office Action of 2/4/2009 at 7. Del Sesto, however, teaches protecting the execution of certain portions of an interactive application instead of protecting user action histories. *See, e.g.*, Del Sesto at 11:59-12:2. The Examiner seems to agree. Office Action of 2/4/2009 at 7. The Examiner, however, asserted that these (and other) missing limitations were obvious in light of the prior art. Applicants respectfully disagree.

With respect to Del Sesto, the Examiner argued that because "the application would

be made up of code just like the data disclosed in Ozer and Dedrick, it would have been obvious for one of ordinary skill in the art to see that the technique of protecting one type of data with a flag *could be used* on another type of data *without substantially changing the functionality of the system*." *Id.* at 3. (Emphasis added.) Applicants respectfully disagree.

Contrary to the Examiner's assertion, the skilled artisan would have understood that protecting information in a user action history could not be achieved by Del Sesto's technique of protecting the execution of an application code. Indeed, the skilled artisan would have readily recognized that protecting user information is achieved by_preventing access to the protected information. In stark contrast, protecting code execution is achieved by providing access to the corresponding information, i.e., to the protected code portion. Thus, the Examiner's suggested modification would clearly not work without substantial change in the functionality of Del Sesto's system. Accordingly, the Examiner's proposed modification would not have been obvious.

Furthermore, with respect to the claimed content reference identifier, the Examiner argued that although "Ozer, Dedrick, Del Sesto, Kiewit and Grauch do not disclose a method wherein the identifier enables access to content related metadata that is not provided in the user history," this limitation is taught by Bunney in the form of a "link information." *Id.* at 8. *See also* Bunney at 4:3-6. Bunney, however, teaches that the "link information" is in the "information distributed by the distributing server," not in the user action item as required by the claim. *Id.* The Examiner asserted that this difference was obvious. Applicants respectfully disagree.

Bunney discloses "an action report information" that is used to record user actions. *See* Bunney at 3:58-4:2. Bunney's "action report information," however, lacks the "link information," which would have been obvious to add according to the Examiner. This clearly demonstrate that skilled artisans, such as the inventors of the Bunney reference, were not considering using the claimed unique content reference identifier in the user action items. Applicants respectfully submit that the Examiner's suggested modification comes from the present application, and accordingly, is based on impermissible hindsight.

In sum, the references cited by the Examiner fail to disclose several limitations of the

claim. The Examiner also failed to show that his suggested combinations and modifications were obvious at the time. Accordingly, no *prima facie* case of obviousness has been made and claim 15 should be allowable. Claims 18, 20, 21, 31, and 34 depend from claim 15 and are allowable for at least the same reasons.

Claim 22 , as amended, recites, in part, limitations similar to those discussed above with reference to claim 15. Because these limitations are not disclosed or fairly suggested in the cited references, claim 22 should be allowable. Claims 23, 24, and 35 depend from claim 22 and are allowable for at least the same reasons.

Claim 17 was rejected under 35 U.S.C. 103(a) as being unpatentable over Ozer, Dedrick, Del Sesto, Kiewit, Grauch, and Bunney, and further in view of the CIDF Website. Claim 17 depends from claim 15 and incorporates by reference all its limitations. As discussed above with reference to claim 15, the references Ozer, Dedrick, Del Sesto, Kiewit, Grauch, and Bunney fail to disclose or fairly suggest several limitations of claim 15. The CIDF Website is also lacking. Accordingly, claim 17 should be allowable.

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CONCLUSION

Applicants respectfully request that the pending claims be allowed and the case passed to issue. Should the Examiner wish to discuss the Application, it is requested that the Examiner contact the undersigned at (415) 772-7493.

The Commissioner is hereby authorized to charge any additional fees, which may be required, or credit any overpayment to Deposit Account No. 50-1597.

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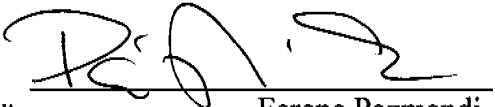to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA   Agent of Record
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